Nos. 76-1121, 76-1153, and 76-1162

In the Supreme Court of the United States

OCTOBER TERM, 1977

Supreme Court, U. S.
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AMERICAN BROADCASTING COMPANIES, INC., ET AL., PETITIONERS

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC., PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a)[1] is reported at 547 F. 2d 159. The decision and order of the National Labor Relations Board (Pet. App. 10a-76a) are reported at 217 NLRB 957.

JURISDICTION

The judgment of the court of appeals (Pet. App. 8a-9a) was entered on November 22, 1976. The petitions for writs of certiorari were filed on February 14, 1977 (No. 76-1121), and February 22, 1977 (Nos. 76-1153 and 76-1162). The petitions were granted and the cases were consolidated on April 25, 1977 (A. 593-595). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act ("Act") as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

Section 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, * * * but shall not include * * * any individual employed as a supervisor * * *.

* * * * *

[1] "Pet. App." refers to the appendix to the petition for certiorari in No. 76-1162. "A." refers to the appendix to the briefs filed herewith. "Tr." refers to the transcript of testimony before the Board. "GCX" refers to the General Counsel's Exhibits before the Board.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

Section 8. * * *

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce * * * (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * * * *

QUESTION PRESENTED

Whether a union violates Section 8(b)(1)(B) of the National Labor Relations Act by threatening to discipline, and by disciplining, supervisor-members, who represent their employers for grievance adjustment or collective bargaining purposes, for crossing union picket lines to perform supervisory functions during a strike.

STATEMENT

1. Since 1970, Writers Guild of America, West, Inc. ("the Union") has represented for collective bargaining purposes those writers who prepare scripts for

motion picture and television films and who are employed by the major television broadcasting companies [2] and by various member firms of the Association of Motion Picture and Television Producers, Inc. ("the Employers") (Pet. App. 20a; A. 8-9, 21). The Employers also employ producers, directors and story editors to manage the production of the films (Pet. App. 25a-30a; A. 9-10, 21). Producers, directors and story editors acting as such are supervisors as defined in Section 2(11) of the Act; they also represent the Employers in the adjustment of grievances within the meaning of Section 8(b)(1)(B) (Pet. App. 12a n. 5, 26a-27a, 27a, 30a, 62a; A. 32-35, 590). In certain situations, producers represent the Employers in collective bargaining within the meaning of Section 8(b)(1)(B) (Pet. App. 26a; A. 41-42).

Certain members of the Union, known as "hyphenates," are capable of performing, and do perform, more than one function (Pet. App. 22a; A. 56-57). For example, a writer may be engaged to produce scripts he has written or to direct the photoplay made from such a script (Pet. App. 34a; A. 210-212; Tr. 623-625). Many hyphenates, however, including those involved in this case, are simply former writers who now work almost exclusively in their non-writing "primary function" as producer, director, or story editor, but have retained their membership in the Union (Pet. App. 21a-22a, 61a-62a; A. 81, 126; Tr. 697-698).

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[2] American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc.

The Union represents hyphenates only when they are employed as writers to perform creative or "rank-and-file" writing functions. The Union does not represent hyphenates when they are employed as producers, directors or story editors. Most hyphenates have personal service contracts with the Employers covering employment in their primary functions (Pet. App. 40a; Tr. 72-74). Accordingly, the collective bargaining agreements between the Union and the Employers provide a union member is not subject to those agreements when he is employed in a non-writing capacity (as, for example, a producer, director or story editor). The agreements further provide that producers, directors, and story editors can perform certain ancillary writing services, known collectively as the "'(A) to (H)' functions," without becoming a "writer" subject to the agreements (Pet. App. 32a-33a; A. 236-237, 240-240a, 317-318, 322-323, 338).[3]

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[3] The writing services, as set forth in the agreements, are (Pet. App. 33a; A. 237, 240a, 318, 322):

(a) Cutting for time,
(b) Bridging material necessitated by cutting for time,
(c) Changes in technical or stage directions,
(d) Assignment of lines to other existing characters occasioned by cast changes,
(e) Changes necessary to obtain continuity acceptance or legal clearance,
(f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography,
(g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.),

2. In February 1973, in anticipation of an economic strike against the Employers, the Union distributed strike rules to all Union members, including hyphenates (Pet. App. 21a; A. 11, 21). In addition to prohibiting writing for struck employers, the rules prohibited all members—specifically including those working in non-writing capacities—from crossing Union picket lines and warned that violations would result in disciplinary action; the strike rules also prohibited Union members from working in the future with members suspended because of strike-rule violations (Pet. App. 35a-38a; A. 15-20).[4] The Union called a special meeting of hyphenate members at which a Union official announced that the strike rules would apply to hyphenates working in any capacity (Pet. App. 42a-43a; A. 11, 21, 88, 106). Other Union officials telephoned hyphenates before and during the strike to warn that they would be disciplined and blacklisted if they worked during the strike (Pet. App. 38a-39a, 42a-43a; A. 122, 147, 180). The Union refused to allow any members, including hyphenate

(h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay.

[4] The Administrative Law Judge found that hyphenates were "particularly vulnerable" to the blacklisting rule because they would be unable to function effectively as directors, producers or story editors if writers refused to work with them (Pet. App. 39a; A. 50-51; Tr. 690-691). Although the Union rescinded the rule itself after the present action was begun (Pet. App. 39a-40a), there was evidence that the Union nonetheless encouraged a "voluntary blacklist." See Pet. App. 69a-70a; A. 537, 540.

members, to resign from membership before or during the strike (Pet. App. 23a-24a; A. 579).

In March 1973, the Union began an economic strike against the Employers (Pet. App. 21a; A. 10-11, 22). The Employers demanded that hyphenates continue to perform their duties "other than as a writer" (Pet. App. 40a-42a; A. 176-178). Many hyphenates crossed Union picket lines in violation of Union strike rules to perform their non-writing functions (Pet. App. 43a-44a; A. 136-138, 157, 178). Most, if not all, advised their employer and the Union that they would not do any rank-and-file writing (Pet. App. 43a) and no hyphenate in fact did any rank-and-file writing during the strike (Pet. App. 59a; A. 177-179).[4]

The hyphenates did, as producers, directors and story editors, exercise their normal supervisory and managerial authority including the adjustment of grievances among non-striking employees (Pet. App. 44a and n. 16, 60a; A. 137, 157, 194, 202-204, GCX 16B, p. 25, GCX 16D, p. 49, GCX 16E, p. 74).

The strike continued against some Employers until July 1973 (Pet. App. 21a; A. 10-11, 22). During and after the strike, the Union filed charges against 31 hyphenates alleging that they had violated strike rules, primarily by crossing Union picket lines (Pet. App. 24a; A. 12, 21).[5] Ten hyphenates were subse-

[4] See also A. 103-104, 137, 139-140, 151, 157, 158, 181, 183, 184-186, 193, 194, 195, 196-197, 200, 203-205, 206, 208, 209, 214-215, 215-216, 217-218, 220-221, 223, 225, 226-227, 229, 230, 231, 232.

[5] Charges filed against some members included an allegation of "conduct prejudicial to the welfare of the Guild" (*Id.* at 20).

quently convicted by Union trial committees; the convicted hyphenates were suspended or expelled from Union membership and were fined amounts ranging from $100 to $50,000 (Pet. App. 45a-46a; A. 12-13, 22). Later the Union membership voted to reduce the penalties of nine of the convicted hyphenates (Pet. App. 46a; A. 583). The Union also announced that all further disciplinary proceedings involving hyphenates would be stayed pending adjudication of the unfair labor practice charges, which meanwhile had been filed by the Employers (Pet. App. 46a; A. 583).

3. The Board (with Member Fanning[7] dissenting) held that the Union violated Section 8(b)(1)(B) of the Act by disciplining and threatening to discipline the hyphenates (Pet. App. 10a-14a, 69a). Affirming the Administrative Law Judge, the Board concluded that the Union "restrained and coerced" the hyphenates from performing their supervisory duties—including grievance adjustment (and collective bargaining in the case of producers)—during the strike (Pet. App. 62a-64a), "and thus coerced and restrained [the] employers in the selection of representatives for collective bargaining and the adjustment of grievances within the meaning of Section 8(b)(1)(B) * * *" (Pet. App. 62a). The Board also relied upon two prior decisions[8] that union discipline of supervisors

[7] Member Fanning was designated Chairman on April 14, 1977.

[8] *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 NLRB 903; *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 NLRB 896.

for crossing picket lines to perform supervisory duties was likely to affect future performance of supervisory duties, including grievance adjustment or collective bargaining (Pet. App. 13a n. 6). The Board entered an appropriate remedial order (Pet. App. 13a, 73a-76a).

Member Fanning dissented for the reasons set forth in his dissenting opinion in *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 NLRB 896, 897-902 (Pet. App. 14a). There he expressed the view that, under the principles enunciated in *Florida Power & Light Co.* v. *International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790, union discipline of supervisors violated Section 8(b)(1)(B) only where the discipline was imposed for the manner in which the supervisors performed their actual grievance adjustment or collective bargaining functions.

4. A divided court of appeals, agreeing with Member Fanning, denied enforcement of the Board's order (Pet. App. 1a-9a).[9]

SUMMARY OF ARGUMENT

Under *Florida Power and Light Co.* v. *International Brotherhood of Electrical Workers*, 417 U.S. 790,

[9] The decision of the court of appeals conflicts with the decisions of two other courts of appeals. See *Wisconsin River Valley District Council* v. *National Labor Relations Board*, 532 F. 2d 47 (C.A. 7); *Chicago Typographical Union No. 16* v. *National Labor Relations Board*, 539 F. 2d 242 (C.A. D.C.), enforcing 216 NLRB 903, petition for certiorari pending, No. 76-688.

union discipline of a member-supervisor "can constitute a violation of § 8(b)(1)(B) * * * when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." 417 U.S. at 804-805. In this case, the Union did everything in its power to coerce hyphenates into refusing to work for the Employers, even in a supervisory capacity, during the strike. Had the coercion succeeded, the Employers would have been deprived of their chosen representatives for grievance adjustment and collective bargaining no less than if the Union had directly pressured the Employers into removing those representatives from their duties.

In addition to the threats of discipline, the discipline itself violated Section 8(b)(1)(B) because a disciplined supervisor may well refuse to risk future discipline by crossing picket lines in future strikes. The discipline thus deprives the employer of his chosen representatives for the duration of such future strikes. Moreover, the Union's blacklisting of disciplined members could have coerced the Employers into discharging disciplined hyphenates to avoid a walkout by rank-and-file writers refusing to work with blacklisted supervisors.

A Section 8(b)(1)(B) violation does not require that the Union discipline be imposed for specific instances of grievance adjustment, and it is not necessary that the disciplined supervisor actually performed any grievance adjustment or collective bargaining, so long as he was authorized to do so in the

normal performance of his supervisory duties. His protected status in crossing the picket line should not depend on the fortuity of whether he is actually called upon to adjust a grievance thereafter.

ARGUMENT

THE BOARD PROPERLY HELD THAT THE UNION VIOLATED SECTION 8(b)(1)(B) OF THE ACT BY THREATENING TO DISCIPLINE, AND BY DISCIPLINING, SUPERVISOR-MEMBERS REPRESENTING THEIR EMPLOYERS FOR GRIEVANCE ADJUSTMENT OR COLLECTIVE BARGAINING PURPOSES, FOR CROSSING UNION PICKET LINES TO PERFORM SUPERVISORY FUNCTIONS DURING A STRIKE.

A. Under the test enunciated in *Florida Power*, a union's discipline of a supervisor-member violates Section 8(b)(1)(B) when that discipline may adversely affect the supervisor's duties as a grievance adjuster or collective bargainer on behalf of the employer.

Section 8(b)(1)(B) of the Act provides that "[i]t shall be an unfair labor practice for a labor organization * * * to restrain or coerce * * * an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." In *Florida Power*, *supra*, this Court reviewed the Board's interpretation of Section 8(b)(1)(B) since the provision was enacted in 1947. 417 U.S. at 798-802. As the Court noted, the Board originally applied Section 8(b)(1)(B) to situations "clearly falling within the metes and bounds of the statutory language" (*id.* at 798)—i.e., where the union had struck or otherwise exerted direct pressure against an employer to force replacement of the representative whom

he had selected for purposes of grievance adjustment or collective bargaining, or to compel the employer to bargain in a multi-employer unit.[10] Subsequently, the Board, with court approval, applied Section 8(b)(1)(B) to prohibit union discipline of such management representatives who were union members for the manner in which they performed their grievance adjustment and collective bargaining functions, or other supervisory duties. As the Board explained in *San Francisco-Oakland Mailers Union No. 18 (Northwest Publications, Inc.)*, 172 NLRB 2173 (69 LRRM 1157, 1158):

> That [the union] may have sought the substitution of attitudes rather than persons, and may have exerted its pressure[s] upon the [Employer] by indirect rather than direct means, cannot alter the ultimate fact that pressure was exerted here for the purpose of interfering with the [Employer's] control over its representatives. Realistically, the Employer would have to replace its foremen or face *de facto* nonrepresentation by them.[11]

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[10] See *Los Angeles Cloak Joint Board ILGWU (Helen Rose Co.)*, 127 NLRB 1543; *General Teamsters Local Union No. 324 (Cascade Employers Association, Inc.)*, 127 NLRB 488.

[11] As the District of Columbia Circuit further explained in *Meat Cutters Union Local 81* v. *National Labor Relations Board (Safeway Stores)*, 458 F. 2d 794, 798-799:

> The 'conduct of the Union [in disciplining a supervisor-member] could very well be considered as an endeavor to apply pressure on the supervisory employees of the [Company], and to interfere with the performance of the duties which the employer required them to perform * * * and to influence them to take action which it, the employer, might deem detrimental to its best interests. This conduct of the union would further operate to make the employees reluctant in the future to take a position adverse to the union, and their usefulness to their employer would thereby be impaired.'

In *Florida Power*, the Board extended Section 8(b)(1)(B) further, to prohibit union discipline of supervisors for performing rank-and-file work during a strike. The Court rejected that further extension of Section 8(b)(1)(B). In such circumstances, the threat of union discipline, if it succeeded in keeping the supervisors away from work, would not have deprived the employer of his chosen representatives for the performance of grievance adjustment, collective bargaining, and other supervisory functions.[12] And it could not reasonably be assumed that discipline for performing rank-and-file work would affect the subsequent performance of collective bargaining, grievance adjustment, or activities related thereto. Accordingly, the union discipline in that case could have been found to violate Section 8(b)(1)(B) only on the premise that it would tend to deprive the employer of the full loyalty of his supervisors. 417 U.S. at 805-807. The Court concluded that, while this concern is "a very real one," Congress addressed it, "not through § 8(b)(1)(B), but through a completely different legisla-

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[12] "[W]here supervisors cross picket lines to perform rank-and-file struck work, union discipline does not violate Section 8(b)(1)(B) since it merely deprives the employer of services normally rendered by strikebreaking replacement employees." *Wisconsin River Valley District Council* v. *National Labor Relations Board*, *supra*, 532 F. 2d at 53.

tive route." 417 U.S. at 807. That is, "Congress sought to assure the employer of the loyalty of his supervisors" (*id.* at 808) by excluding supervisors from the coverage of the Act (see Section 2(3), 29 U.S.C. 152(3)) and by leaving an employer free to refuse to hire, or to discharge, a supervisor because of his union membership (see Section 14(a), 29 U.S.C. 164(a)).

However, the Court recognized that "a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) * * * when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." 417 U.S. at 804-805. In commenting on this test, Mr. Justice White stated in dissent: "I do not read the Court to say that § 8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-and-file work, during a labor dispute." *Id.* at 815 n.2.[13]

[13] Similarly, the District of Columbia Circuit's decision in *Florida Power*, which this Court affirmed, noted that "[t]he unions participating in the present cases conceded * * * at oral argument * * * that when a supervisor crosses a picket line to perform *supervisory* work he remains immune from discipline" (emphasis in original). *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 487 F. 2d 1143, 1157 (C.A. D.C.). Judge MacKinnon, dissenting, stated without challenge that "there is unanimous agreement on this court that section 8(b)(1)(B) prohibits union discipline of supervisory personnel for acts performed by them in the course of their supervisory or managerial duties." *Id.* at 1174.

B. The Board properly concluded that the *Florida Power* test was satisfied here.

There can be no doubt that the hyphenates were supervisors who possessed and exercised the authority to adjust grievances or bargain collectively on behalf of the Employers, within the meaning of Section 8(b)(1)(B).[14] It is likewise plain that the Union did everything in its power to coerce members into refusing to work for struck Employers even in a supervisory capacity. The Union conducted a special prestrike meeting to warn hyphenates that they would be subject to the discipline provided in the strike rules if they worked in their supervisory capacities during the strike (Pet. App. 42a-43a). This message was emphasized by "publicity, and through personal con-

[14] Before the Board, the Union conceded that executives, producers, and directors are supervisors as that term is defined in Section 2(11) of the Act and represent the Employers for the purposes of grievance adjustment (A.590). It is immaterial that they adjusted grievances only of actors, cameramen, and other non-writing employees (Br. in Opp. 3). The Employers were entitled to their chosen representatives for the adjustment of the grievances of their non-writing employees, no less than of their writers.

The Board's finding that story editors function as statutory supervisors and Section 8(b)(1)(B) representatives is supported by substantial evidence on the record as a whole. Witnesses testified that story editors effectively recommend the hiring and firing of writers (A. 48-50, 64, 109, 121-122, 130, 132), oversee and edit the writers' work (A. 48-49, 64, 82-86, 109, 132, 166), and resolve or attempt to resolve writers' grievances (A. 54-55, 79, 109, 121, 132).

tact, memos, telegrams and letters * * *" (Pet. App. 38a). The coercive impact of the strike rules upon the hyphenates was further accentuated by the Union's refusal to allow hyphenates to resign from membership, or otherwise avoid the threatened discipline, before and during the strike.

The obvious purpose of such actions was to force the hyphenates to honor the Union's picket lines and thus to cease performing their "supervisory or management functions," necessarily including grievance adjustment and collective bargaining, for the duration of the strike. Hence, if the hyphenates had succumbed to the Union's threats of discipline and other pressure and had refused to cross the picket lines, the Employers would have been deprived of their chosen representatives for the performance of those functions for the duration of the strike, no less than if the Union had directly pressured the Employers into removing those representatives from those duties.[15]

Moreover, as for those hyphenates who defied the Union, crossed the picket lines, and were disciplined, the likely effect of such discipline is to deprive the Employers of their collective bargaining or grievance adjustment services in the future.[16] If a union

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[15] It is well established that a violation of Section 8(b)(1)(B) does not depend on the ultimate success of the union's attempts at restraint or coercion. See, *e.g.*, *Florida Power*, *supra*, 417 U.S. at 798-799, 803, 804 n. 15.

[16] In some cases, disciplinary proceedings were instituted against a hyphenate while the Union was still on strike against his employer or the other employers (Pet. App. 21a, 24a, 44a-45a). In those cases, the Union discipline, like the pre-

member who is a supervisor is suspended, fired, or otherwise disciplined for crossing a picket line during a strike to perform collective bargaining or grievance adjustment duties, he necessarily will think twice about crossing the union's picket lines in a future strike though only the same duties are required. If the discipline serves its intended deterrent purpose,[17] the member will not again cross the lines to carry out those duties, and that decision will deprive the employer of his chosen management representatives for the duration of any subsequent strike.[18]

Indeed, the Union's strike rules were such that the Employers were likely to be deprived of their selected representatives' services even apart from a subsequent strike. Since the rules prohibited Union members from working with disciplined members, an

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strike threats of discipline, would have an impact on the present strike. It would make those hyphenates who were refusing to cross the picket lines even more reluctant to do so.

[17] The reduction of disciplinary penalties by the Union membership in this case (see p. 8, *supra*) does not eliminate the coercive impact of the Union's actions. One hyphenate remains suspended, several substantial fines remain assessed, and charges against many other hyphenates are currently held in abeyance pending the outcome of this litigation (Pet. App. 46a; A. 544-547, 583). Nor is there any assurance that the Union's membership would vote to reduce future discipline imposed by its leadership. See *Toledo Locals No. 15-P and 272, Lithographers Union (Toledo Blade)*, 175 NLRB 1072, 1079, enforced, 437 F. 2d 55 (C.A. 6); *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 206 NLRB 294, 295.

[18] In *Florida Power*, by contrast, the supervisors were disciplined for crossing the picket lines to perform rank-and-file

employer who retained a disciplined hyphenate risked a post-strike walkout by his entire writing force, making that hyphenate virtually useless to his employer following the strike. The Union's blacklisting rule (and the actions following nominal rescission of that rule, see note 4, *supra*) therefore may have brought about a situation where the employer would be permanently deprived of the hyphenate's supervisory services following the strike.

Hence, contrary to the view of the dissenting Board Member, it is not necessary to show that the union's discipline was imposed in response to specific acts of grievance adjustment or collective bargaining which the supervisor performed during the strike. It is sufficient, to make out a violation of Section 8(b)(1)(B), that the union disciplined, or threatened to discipline, members for crossing picket lines to perform supervisory duties which included grievance adjustment or collective bargaining. For, as shown, such action can as readily deprive the employer of his chosen representatives for the performance of those duties as would discipline directed at the manner in which they were performed. See *Wisconsin River Valley District Council* v. *National Labor Relations Board*, *supra*, 532 F. 2d at 53.

By the same token, it is immaterial whether a hyphenate who was authorized to adjust grievances

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work. Implicit in the Court's holding is the conclusion that the only predictable effect of such discipline would be to deter the supervisors from again crossing picket lines to perform rank-and-file work. See note 12, *supra*.

was in fact called upon to do so during the strike. Because the Act proscribes restraint or coercion in the *selection* of representatives, the legality of the union's discipline should not be made to turn upon the wholly fortuitous (and, for the union, wholly irrelevant) occurrence of an actual grievance among non-striking employees. Both the Employer and the supervisor are entitled to know before the supervisor crosses a picket line to perform supervisory duties whether the supervisor can lawfully be disciplined by the Union for such an act. If the supervisor must depend upon the development of an actual grievance to protect, *nunc pro tunc*, his action, he may well decide not to risk the discipline and refuse to cross the picket line altogether.[19]

For these reasons, the Board properly concluded that the Union's threats of discipline, and the discipline itself, were likely to "adversely affect" the hyphenates' "conduct in performing the duties of, and

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[19] Moreover, the Union's discipline of a supervisor with grievance adjustment or collective bargaining authority for crossing a picket line would be likely to affect the manner in which those functions are performed in the future. The supervisory functions performed during the strike are similar to those which the supervisor will perform later. Hence, the Board could reasonably conclude that the supervisor will perceive a connection between the performance of supervisory functions and the discipline, and modify his future performance of those functions, including grievance adjustment or collective bargaining, to avoid antagonizing the union. *Wisconsin River Valley District Council of Carpenters* v. *National Labor Relations Board*, *supra*, 532 F. 2d at 53; *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, *supra*, 216 NLRB at 904-905.

acting in [their] capacity as, grievance adjuster or collective bargainer on behalf of the employer[s]" (*Florida Power, supra*, 417 U.S. at 804-805), and that therefore the Union violated Section 8(b)(1)(B) of the Act.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded to that court with instructions to enforce the Board's order.

Respectfully submitted.

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